

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 7 Case

Marlena Mai Yang,

Bky. No. 04-30885-GFK

Debtor.

**NOTICE OF HEARING AND MOTION FOR OBJECTION TO
CLAIMED EXEMPT PROPERTY AND MEMORANDUM OF LAW**

TO: THE DEBTOR AND OTHER ENTITIES SPECIFIED IN LOCAL RULE 9013-3:

1. Nauni Jo Manty, Trustee of the bankruptcy estate of the above-named Debtor ("Trustee"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at **2:30 p.m. on December 6, 2004**, before The Honorable Gregory F. Kishel, Chief Judge of the Bankruptcy Court, in Courtroom No. 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than November 29, 2004, which seven days before the time set for the hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than November 26, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition was filed under Chapter 7 on February 2, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, Minn. Stat. §550.37, Fed. R. Bankr. P. 4003, and Local Rule 4003-3. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. The Trustee requests relief with respect to the Debtor's claimed exempt property.

6. The Debtor claimed her 2003 federal income tax refund in the amount \$4,399.00, her 2003 Minnesota income tax refund in the amount of \$1,678.00 and her 2003 property tax refund in the amount of \$558.00, collectively the ("Refunds") exempt under Minn. Stat. § 550.37(14).

7. The Trustee objects to the claim of exemption because Minn. Stat. § 550.37(14) allows for exemption of only the Earned Income Credit and Minnesota Working Family Credit portion of the tax refunds. The Trustee requested turnover and has received copies of the Debtor's 2003 state and federal income tax returns, (the "Returns"). Upon review of the Returns, the Trustee has determined that \$3,247.00 of the federal refund is attributed to Earned Income Credit and can be exempt under Minn. Stat. § 550.37(14) and \$1,472.00 of the state refund is attributed to Minnesota Working Family Credit and can be exempt under Minn. Stat. § 550.37(14). The Debtor is not entitled to exempt \$1,916.00 of the Refunds. Therefore, the Trustee requests that the Debtor's exemption entitlement under Minn. Stat. § 550.37(14) be allowed at \$3,247.00 for the federal refund and \$1,472.00 for the state refund.

WHEREFORE, the Trustee moves the Court for an order sustaining Trustee's objection to claimed exempt property in the amount of \$1,916.00, and such other relief as may be just and equitable.

Dated this 4th day of November, 2004.

/s/ Nauni Jo Manty

Nauni Jo Manty
Trustee in Bankruptcy
Attorney ID No. 230352
Rider Bennett, LLP

333 South 7th Street, Suite 2000
Minneapolis, MN 55402
(612) 340-7900

VERIFICATION

I, Nauni Jo Manty, the movant named in the foregoing Notice of Hearing and Motion for Objection to Claimed Exempt Property, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 11th day of November, 2004.

/s/ Nauni Jo Manty
Nauni Jo Manty, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Debtor.

I, Molly K. Hagen, declare under penalty of perjury that on November 4, 2004, I served copies of the attached **Notice of Hearing and Motion for Objection to Claimed Exempt Property and Memorandum of Law and Unsworn Certificate of Service** by first class U.S. mail, to the following parties:

| | |
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| Marlena Mai Yang 1033 Reany Ave E. St. Paul, MN 55106 | United States Trustee 1015 U.S. Courthouse 300 So. Fourth St. Minneapolis, MN 55415 |
| Gregory J. Walsh Walsh and Gaertner PA 200 University Ave W, Suite 220 St. Paul, MN 55103 | |

Executed on: November 4, 2004.

/s/Molly K. Hagen

Molly K. Hagen
Legal Administrative Assistant
Rider Bennett LLP
333 South Seventh Street
Suite 2000
Minneapolis, MN 55402

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ORDER

This matter came before the Court on the motion by Nauni Jo Manty, the Trustee for the Bankruptcy case of Marlena Mai Yang (the “Trustee”) for Objection to Claimed Exempt Property. Appearances were noted in the record at the time of the hearing. Based upon the files and records, the Court makes this Order pursuant to the Rules of Bankruptcy Procedure.

IT IS ORDERED: The Trustee’s objection to the Refunds is sustained. The portion of the Refunds totaling \$1,916.00 is estate property.

Dated: _____

Gregory F. Kishel
Chief United States Bankruptcy Judge